

Brincat Anna at Parlament-MT

From: Deguara Charles at NAO
Sent: Friday, 23 June 2023 07:34
To: Brincat Anna at Parlament-MT
Cc: Darren Carabott; Camilleri Noel at NAO; Mercieca Keith at NAO; Fenech Caroline at NAO
Subject: Information requested by PAC
Attachments: Dokument A - NAO177.pdf; Dokument B.pdf

Għażiża Sinjura Brincat,

Nagħmel referenza għall-korrispondenza tiegħek mibgħuta l-bieraħ.

Waqt il-verifika li saret mill-Uffiċċju Nazzjonali tal-Verifika ma giet sottomessa ebda dokumentazzjoni li turi li saret konsultazzjoni mal-Kummissjoni Ewropea fir-rigward li Gasol toħrog mill-Konsorzju ElectroGas. Jekk saret din il-konsultazzjoni, l-Uffiċċju ma kienx mgħarraf biha meta saqsa dwar il-proċess tal-ħruġ ta' Gasol. Ir-risposta tal-Enemalta f'dan ir-rigward kienet is-segwent:

"Given the urgency of the matter, during a meeting held between PS MEH and Chairman EM plc, it was decided to (a) seek advice from Camilleri & Preziosi Advocates as to the legal ramifications that such a change in consortium composition may have brought about; and (b) commission an ad-hoc committee to carry out a technical re-assessment given the proposed shareholding structure changes." [NAO285]

Allura l-uniċi pariri li ġew għall-attenzjoni tal-Uffiċċju kienu dwar jekk il-ħruġ ta' Gasol kinitx legali (rappurtat f'paragrafi 9.2.25 sa 9.2.26 u mehmuż bħala Dokument A) u dwar jekk l-eżitu tal-proċess ta' evalwazzjoni tal-RfP kienx ikun differenti li kieku l-Gasol ma kinitx membru tal-Konsorzju ElectroGas (rappurtat f'paragrafi 9.2.2 sa 9.2.12 tar-rapport u mehmuż bħala Dokument B).

Tislijiet,

Charles Deguara

Charles Deguara
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From: Brincat Anna at Parlament-MT <anna.brincat@parlament.mt>
Sent: Thursday, June 22, 2023 11:18 AM
To: Deguara Charles at NAO <charles.deguara@gov.mt>
Cc: Darren Carabott <carabottdarren@gmail.com>
Subject: Re: Information requested by PAC

Is-Sur Charles Deguara
Awditur Ġenerali

Ippermettili nfakkrek li fil-laqgħa tal-Kumitat Permanenti dwar il-Kontijiet Pubbliċi li saret nhar it-Tlieta, 20 ta' Ġunju 2023, iċ-Chairman talab sabiex jiġi kkonfermat, jew xort'oħra, li waqt l-investigazzjoni li saret mill-Uffiċċju tiegħek dwar il-kuntratti mogħtija minn Enemalta lil ElectroGas Malta Ltd, ġiet sottomessa dokumentazzjoni li turi li saret konsultazzjoni mal-Kummissjoni Ewropea fir-rigward li Gasol toħroġ mill-Konsorzju ElectoGas, kif ukoll il-pariri li talbet, u ngħatat, Enemalta fl-istess rigward.

Filwaqt li niringrazzjak, inselli għalik.

Anna

Anna Brincat

Clerk for Public Accounts Committee
Standing Committee for the Environment, Climate Change and Development Planning
National Audit Office Accounts Committee

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HOUSE OF REPRESENTATIVES
PARLIAMENT OF MALTA
FREEDOM SQUARE, VALLETTA, MALTA

MEMO

TO: Ronald Mizzi – Permanent Secretary, Ministry for Energy and Health
FROM: Camilleri Preziosi
SUBJECT: Change in Shareholding in ElectroGas Malta Limited
DATE: 29 July 2015

We have been requested to reduce to writing and to expand on the discussion held in the wake of the transfer of shares from Gasol Malta Limited (“**Gasol**”) to the other shareholder of ElectroGas Malta Limited (“**EGM**”) and in relation to the implications, purely from a public procurement perspective, of the acquisition of the shares by the other three shareholders of EGM (the “**Gasol Share Transfer**”).

Assumption

This memo and the views set out hereunder are based on:

- A. the declaration given by the evaluation committee¹ responsible for evaluation of bids in connection with the project forming the subject matter of this memo that:
 - (i) that the presence of Gasol in the consortium did not, in any manner whatsoever, constitute a decisive factor of the evaluation;
 - (ii) that the Electrogas Malta Consortium, without Gasol, continues to meet the financial and technical requirements; and
 - (iii) that the decision of the evaluation committee to recommend that the contracts be awarded to Electrogas Malta Consortium following the evaluation of all bids submitted would not have been affected if the consortium did not include Gasol as a party; and

- B. the Gasol Share Transfer has occurred due to the imminent insolvency of Gasol and its inability to meet its financial obligations in relation to the project forming the subject matter of this memo.

Case law of the European Court in relation to Changes in Composition of Tenderers

The general rule in terms of the jurisprudence of the Court of Justice of the European Union (the “**CJEU**”) is that the general principles of EU procurement law are also applicable to contracts executed between contracting authorities and tenderers. Therefore, the application of contract law to procurement contracts must follow the general principles of procurement set out in Directive 2004/17 EC (the “**Utilities Directive**”).

¹ We note that we have not had sight of this declaration.

There is limited case law of the CJEU on changes in shareholding. The following are some of the cases dealing with changes in composition / subcontractor.

*Presstext*²

The *Presstext* case concerned amendments made during the currency of a public contract. The CJEU held that in order to ensure transparency of tender procedures and equal treatment of tenderers, amendments to the provisions of a public contract during the currency of the contract constitute a new award of a contract within the meaning of public procurement directives when they are materially different in character from the original contract and, therefore, are such as to demonstrate the intention of the parties to renegotiate the essential terms of that contract³.

The CJEU went on to state that the following changes would be deemed to constitute substantial alterations:

- (i) an amendment that introduces conditions which, had they been part of the initial award procedure, would have allowed for the admission of tenderers other than those initially admitted or would have allowed for the acceptance of a tender other than the one initially accepted;
- (ii) an amendment which extends the scope of the contract considerably to encompass services not initially covered;
- (iii) an amendment which changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the terms of the initial contract.⁴

In the *Presstext* case, one of the changes made was a change in the contractual partner. In particular, the tenderer which was awarded the contract (APA) set up a wholly-owned subsidiary (APA-OTS).

In paragraph 40 of the *Presstext* judgment the CJEU held as follows:

“As a rule, the substitution of a new contractual partner for the one to which the contracting authority had initially awarded the contract must be regarded as constituting a change to one of the essential terms of the public contract in question, unless that substitution was provided for in the terms of the initial contract, such as, by way of example, provision for subcontracting.”

The CJEU noted that the new contractual partner was a wholly-owned subsidiary of the tenderer, APA had the power to instruct APA-OTS in the conduct and management of its business and the two companies were bound by a contract under which profit and loss was transferred to, and assumed by, APA. The case file also showed that a person authorised to represent APA had assured the contracting authority that, following the transfer of the OTS services, APA was jointly and severally liable with APA-OTS and that there would be no change in the overall performance experienced.

² Case C-454/06 – *Presstext Nachrichtenagentur GmbH v Republik Österreich*.

³ Case C-454/06 – *Presstext Nachrichtenagentur GmbH v Republik Österreich*, paragraph 34.

⁴ Case C-454/06 – *Presstext Nachrichtenagentur GmbH v Republik Österreich*, paragraphs 35-37.

The CJEU therefore reached the conclusion that such arrangement was, in effect, an internal reorganisation of the contractual partner, which did not modify in any fundamental manner the terms of the initial contract.⁵

The CJEU concluded that the change in question did not constitute a substantial alteration since the services to be supplied were transferred to another service provider established as a limited liability company, the sole shareholder of which is the initial service provider, controlling the new service provider and giving it instructions.

The CJEU went on to state that if the shares in APA-OTS were transferred to a third party during the currency of the contract, this would no longer be an internal reorganisation of the initial contractual partner, but an actual change of contractual partner, which would, as a rule, be an amendment to an essential term of the contract. Such an occurrence would be liable to constitute a new award of contract.

*Makedoniko Metro Case*⁶

The facts of the case were as follows: following the commencement of negotiations between the Greek State and Makedoniko Metro ("**Makedoniko**") as the provisionally designated successful tenderer, Makedoniko sent two notices: (a) a letter dated 29 March 1996, notifying a change in composition; and (b) a letter dated 14 June 1996, notifying that an entity which previously formed part of the consortium and which subsequently became insolvent and went into liquidation was no longer part of the consortium.

The matter was referred to the CJEU and the CJEU noted that the only provision in the public procurement directives dealing with groups of contractors was confined to: (a) stating that tenders may be submitted by groups of contractors; and (b) preventing them from being required to assume a specific legal form before the contract has been awarded to the group selected.

The CJEU therefore concluded that rules about their composition are thus a matter for the Member States to determine and that the procurement directives do not preclude national rules which prohibit a change in the composition of a group consortium taking part in a procedure for the award of a public works contract or a public works concession which occurs after submission of tenders.

*The Wall Case*⁷

In this case, the tenderer which was awarded the contract changed its subcontractor Wall AG, which was specifically designated by name in its submission. The contract provided that the tenderer was entitled to change its subcontractors with the consent of the contracting authority.

⁵ Case C-454/06 – Presstext Nachrichtenagentur GmbH v Republik Österreich, paragraph 45.

⁶ Case C-57/01. Makedoniko Metro and Mikhaniki AE v. Elliniko Dimosio.

⁷ Case C- 91/08 Wall Stadt Frankfurt am Main, Frankfurter Entsorgungs- und Service (FES) GmbH.

The CJEU held that:

“A change of subcontractor, even if the possibility of a change is provided for in the contract, may in exceptional cases constitute such an amendment to one of the essential provisions of a concession contract where the use of one subcontractor rather than another was, in view of the particular characteristics of the services concerned, a decisive factor in concluding the contract, which is in any event for the referring court to ascertain.”

According to the referring court, it is likely that in this case the contract was awarded to the preferred bidder because of the identity of the subcontractor it had introduced.

*The Idrodinamica Case*⁸

In this case, pending conclusion of the contract, the consortium to which the contract had been awarded informed the contracting authority pursuant to a letter that one of the associate undertakings had withdrawn from the consortium but that it nevertheless intended to take on the contract and, even with its reduced membership (consisting of the leading undertaking and two associates), it was able to satisfy the technical and economic requirements of the notice of tender. The contracting authority approved the withdrawal and awarded the contract. This decision was challenged and the matter was referred to the CJEU.

The CJEU held that:

“... the decision authorising the change in composition of the consortium to which the contract had been awarded necessitates an amendment of the award decision which may be regarded as substantial if, in the light of the particular features of the tender award procedure in question, it alters one of the essential elements that were decisive in the adoption of the award decision. In that situation, all relevant measures provided for by national law would have to be taken to remedy that irregularity, which might extend to a new award procedure”

*Danish Case*⁹

In a Danish case which has been referred by the Danish Complaints Board to the CJEU for a preliminary ruling, a member of a consortium consisting of two legal entities went bankrupt after prequalification and the final bid was then submitted by the remaining legal entity.

In its preliminary ruling the Danish Complaints Board found that the changes to the tenderer between prequalification and the award of contract very likely constitute a violation of the public procurement rules, as in the view of the complaints board the final offer was submitted by an entity that had not been prequalified.

⁸ Case C-161/13 – Idrodinamica Spurgo Velox srl v Acquedotto Pugliese SpA.

⁹ Case C-396/14 – MT Højgaard A/s og Züblin A/S vs. Banedanmark

This case has been postponed by the Danish Complaints Board following referral to the CJEU for a preliminary ruling. A preliminary ruling of the ECJ on this case may assist in understanding when changes in the composition of consortium / joint ventures are considered to constitute substantial alterations.

Analysis of Case Law and New Utilities Directive vis-à-vis Gasol Share Transfer

In terms of case law of the CJEU, amendments to public contracts which are considered to be 'substantial alterations' are not permitted. The substitution of a contractual partner has been deemed to be *prima facie* a substantial alteration since this would lead to a situation in which an undertaking which did not have to compete with other bidders and whose selection was not based on a comparison with other possible suppliers is wholly or partly entrusted with implementing the public contract.

The Utilities Directive does not indicate which changes to a contract may constitute 'substantial alterations'. However, Directive 2014/25/EU (the "**New Utilities Directive**")¹⁰ sets out in Recital 116 and Article 89(d)(ii), both reproduced hereunder, those changes which would not constitute substantial alterations:

Recital 116 provides:

"However, the successful tenderer performing the contract should be able, in particular where the contract has been awarded to more than one undertaking, to undergo certain structural changes during the performance of the contract, such as purely internal reorganisations, takeovers, mergers and acquisitions or insolvency. Such structural changes should not automatically require new procurement procedures for all contracts performed by that tenderer."

Article 89(d)(ii) provides that a contract may be modified without a new procurement procedure in the following case:

"Where a new contractor replaces the one to which the contracting entity had initially awarded the contract as a consequence of either universal or partial succession into the position of the initial contractor, following corporate restructuring, including takeover, merger, acquisition or insolvency, of another economic operator that fulfils the criteria for qualitative selection initially established provided that this does not entail other substantial modifications to the contract and is not aimed at circumventing the application of this Directive."

We are informed that the Gasol Share Transfer has occurred due to the imminent insolvency of Gasol and its inability to meet its financial obligations in relation to the project forming the subject matter of this memo.

¹⁰ It must be noted that this Directive is not yet in force in Malta. However, the new public procurement directives seek to 'codify' existing jurisprudence in order to facilitate interpretation of said directives.

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As explained above, the CJEU has not expressed itself specifically on changes in the composition of joint ventures similar to the change forming the subject matter of this memo (i.e. situations where an equity member goes bankrupt after conclusion of the contract), and the exclusions to the general rule (i.e. that changes in composition are substantial alterations) set out in the CJEU case law are extremely limited.

Notwithstanding the above, it is our view that since, as we are informed, Gasol was simply an equity investor or project coordinator whose capabilities (whether technical, financial or otherwise) did not in any manner constitute a decisive factor in the award of the contract¹¹, and since the shares in Gasol were acquired by entities whose technical and financial capabilities not only formed part of the evaluation of the consortium but formed the basis on which the award was made to the said consortium, there is a strong basis to argue that the Gasol Share Transfer does not constitute a substantial alteration since it had no bearing on the evaluation of tenders and the final award of the contract to EGM.

In this case, the entities forming part of EGM following the Gasol Share Transfer competed with other bidders and their selection was based on a comparison with other possible suppliers. The declaration of the Evaluation Committee has confirmed that, if the evaluation of the bid submitted by EGM was based only on the entities forming part thereof after its reduced membership (following the Gasol Share Transfer), EGM would still have been able to satisfy the technical and economic requirements of the tender document and the Evaluation Committee would have still recommended that the contract be awarded to EGM.

Such a scenario in fact would in our view fall within the parameters set out by the CJEU in the *Wall AG Case* and the *Idrodinamica Case*, as set out above, and also appears to be expressly contemplated in Article 89(d)(ii) of the New Utilities Directive¹².

General Rules Governing Tendering

Reference is also made to the following extract from the General Rules Governing Tendering published in local newspapers:

“All partners in the joint venture/consortium are bound to remain in the joint venture/consortium until the conclusion of the contracting procedure. The consortium/joint venture winning this contract must include the same partners for the whole performance period of the contract other than as may be permitted or required by law”.

It is pertinent to note that said extract was taken from rule 2.3 of the General Rules Governing Tendering. Similar restrictions are set out in the tender templates issued by the Department of Contracts (the “DoC”).

The said templates, whilst they may serve as useful material for contracting authorities to consider in preparing their tenders, are only applicable to tenders issued by the DoC. The tender forming the subject matter of this contract was issued by Enemalta Corporation and therefore these conditions are not applicable to this case.

¹¹ As confirmed by the Evaluation Committee in its declaration.

¹² This article has not as yet been tested before the CJEU.

CONFIDENTIAL - PRIVILEGED COMMUNICATION

We also note that the General Conditions of contract issued by the DoC (which conditions form an integral part of the contract executed with economic operators) specifically provide that:

“The composition of the joint venture or consortium shall not be altered without the prior consent in writing of the Central Government Authority.”

This condition, as opposed to Rule 2.3 of the General Rules Governing Tendering, forms part of the contracts awarded by the DoC and subsequently signed with the respective preferred bidder, therefore forming part of the contractual relationship between the parties following award of the relevant contract.

Applicable Legal Regime

The tender forming the subject matter of this memo was issued for the award of contracts for the supply of energy and fuel. In terms of Article 26 of the Utilities Directive (as well as Regulation 26 of Subsidiary Legislation 174.06), contracts for the supply of energy or of fuels are specifically excluded from the application of the Utilities Directive.

This notwithstanding, the principles of the Treaty for the Function of the European Union (the “Treaty”) are still applicable and the procurement process, as well as the contract awarded pursuant thereto, must respect the principles of transparency, equal treatment and non-discrimination.

The fundamental principles of equal treatment and transparency as set out in the Treaty require that a contract is not awarded to a tenderer who has not been prequalified. Furthermore, changes in the composition of a tenderer raise concerns with regards to the lawfulness of the decision awarding the contract (particularly when the change occurs prior to the award of the contract) or may constitute substantial alterations to a contract (with respect to changes following conclusion of the procurement procedure and during the term of the relevant contract).

As explained above, on the basis of the facts surrounding the Gasol Share Transfer and the declaration of the Evaluation Committee with respect to the evaluation process, there is a strong basis to argue that the Gasol Share Transfer does not infringe the principles of the Treaty.

Conclusion

The advice set out in this memo is being given on a preliminary basis following a review of a number of cases of the CJEU within the limited time available. In practice, whether a change is permissible will always depend on a specific assessment of the fact on a case by case basis.

We trust that the above addresses the matters you requested us to consider, however we remain available for any further information or clarifications.

Yours sincerely,



Camilleri Preziosi

Technical Assessment on the Qualification of Electrogas Malta Consortium with the Bid Requirements on the proposed shareholding structure

Section 1: Background

On the 7th July 2013, Enemalta had issued a Request for Proposals inviting shortlisted bidders from the initial Expression of Interest and Capabilities to submit their proposals for entering into a long term Power Purchase Agreement and Gas Supply Agreement for an eighteen year period. The Electrogas Malta Consortium was selected as the Preferred Bidder by the Adjudication Committee. The members of the Electrogas Malta Consortium comprised the following:

- Gasol Plc as lead member with a proposed shareholding of **30%**;
- GEM Holdings (a joint venture between Gasan Group, Tumas Group and other minor shareholders) with a proposed shareholding of **30%**;
- Siemens Project Ventures with a proposed shareholding of **20%**; and
- Socar Trading with a proposed shareholding of **20%**;

In view of recent developments, Gasol Plc has expressed its intention of disposing its shares in the special purpose company and to sell its equity stake to the existing shareholders. As a result, in line with the requirements of the Transaction Agreements, Electrogas Malta Limited has made a formal request to Enemalta to modify its shareholding structure as follows:

- Siemens Project Ventures as lead member with a proposed shareholding of **33.333%**;
- Socar Trading with a proposed shareholding of **33.333%**; and
- GEM Holdings with a proposed shareholding of **33.333%**.

Section 2: Terms of Reference

In light of the above request, Enemalta has appointed an evaluation committee to assess whether changes in the shareholding of the Company would still fulfill the bidder's qualification criteria outlined in the Request for Proposals. The members of the evaluation committee appointed by Enemalta are:

- David Galea as Chairman;
- George Gregory (member); and
- Anita Aloisio (member).

The Evaluation Committee has been tasked to assess whether the exit of Gasol Plc from the EGM consortium has negatively impacted:

- the Consortium's compliance with the criteria of the request for proposals; as well as
- the resultant scoring of EGM by the Adjudicating Committee.

This report sets out a summary of the evaluation carried out by the evaluation committee and the conclusions reached therefrom.

Section 3: The Evaluation Process in the Request for Proposals Stage

The selection and evaluation process that had been carried out during the Request for Proposals Stage by the Adjudication Committee appointed at that time consisted of the following phases:

- The First Stage (**Administrative Compliance**) evaluated the completeness of the bid submitted in accordance with the submission criteria.
- The Second Stage (**Minimum Requirements**) evaluated the compliance of the bid in relation to the bidders' financial, commercial and technical qualifications and expertise as well as the bidders' compliance with the Minimum Functional Specifications and other Commercial and Technical requirements set out in the bid document.
- The Third Stage (**Additional Requirements**) scored the bidders against a set of additional criteria (which went beyond the minimum requirements of the bid). The marks achieved as part of this evaluation process accounted for a total of 20% of the total weighting.
- The Fourth Stage (**Financial Evaluation**) scored the bidders against their financial proposal through a financial analysis determining the long term average price of Gas and Electricity using a set of assumptions which were published to all bidders prior to the deadline of the bid submission. The marks achieved as part of this evaluation process accounted for a total of 80% of the total weighting.

In view of the fact that the exit of Gasol plc might have impacted **Phase 2: Minimum Requirements** and **Phase 3: Additional Requirements** only, the evaluation committee limited its work to these two phases.

Section 4: Phase 2: Minimum Requirements Evaluation

This Evaluation Committee has carried out an evaluation on whether the Company would continue to qualify under the Minimum Requirements Criteria set out in the request for proposals on the basis of the new proposed shareholding structure. The relevant minimum requirements to be re-evaluated consist of the following:

Bid Form 4.1- Confirmation of EOIC Requirements

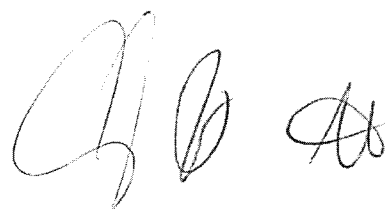
A- Electricity Facilities (Section 2)

- 1- Provide complete evidence of experience of two relevant CCGT projects which were developed by the Electricity Facilities Developer with a net send-out generation capacity of not less than 150 MWe, the total capacity of which have been in commercial operation on the commercial operations date;

The experience cited by the Electrogas Malta consortium in the RFP under this requirement relates to two projects managed and partly owned by Siemens Project Ventures comprising of the following:

- Thaddart Morocco consisting of a 385 MW CCGT Natural Gas Fired Plant in which Siemens Project Ventures has a shareholding of 20%;
- T-Power Belgium consisting of a 435 MW CCGT Natural Gas Fired Plant in which Siemens Project Ventures has a shareholding of 33.33%;

On such basis this requirement continues to be fulfilled with the continued participation of Siemens Project Ventures as a member of the Consortium.



B- Gas Facilities (Section 3)

- 2- Provide complete evidence of experience of two relevant LNG projects which were developed by the Gas Facilities Developer with a net send-out generation capacity of not less than 0.5 MTPA, the total capacity of which have been in commercial operation on the commercial operations date;

The experience cited by the Electrogas Malta consortium in the RFP under this requirement relates to two projects managed and partly owned by Socar comprising of the following:

- Reythousa LNG Terminal consisting of a terminal with a send out capacity of 3.0 MTPA with the existing terminal consisting of an import jetty, two full containment storage tanks, regasification equipment and send out facilities. Socar has acquired 66% of Defsa shares in the project.
- Azerbaijan Gas Processing Plant consisting of a 100% funded project by Socar which includes a gas processing plant with a send out capacity of 6 mpta.

On such basis this requirement continues to be fulfilled with the continued participation of Socar Trading as a member of the Consortium.

C- Financial Strength and Creditworthiness

The Request for Proposal specifies that the bidder must fulfil the following financial and credit worthiness criteria:

- 3- *The Consortium's equity providers must have aggregate shareholders' funds of at least €150 million;*

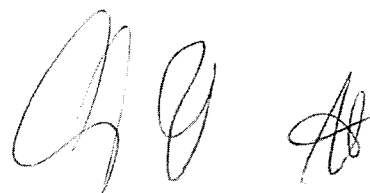
A Breakdown of shareholders' funds as per the Audited Financial Statements that had been provided by the Bid is outlined below:

Member	Shareholders' Funds €	Basis
Siemens Project Ventures	149 million	Audited Financial Statements September 2012
Socar Trading	112 million (quoted as USD 148 million ¹)	Audited Financial Statements – December 2011
Tumas Group	93.6 million	Audited Financial Statements – December 2012
Gasam Group	78 million	Audited Financial Statements – December 2012
Total	432.6 million	

As outlined above, it can be confirmed that following the exit of Gasol plc, the Consortium continues to adequately satisfy this requirement.

- 4- One or more of the company members (other than the Financial Adviser) with a total proposed shareholding in the SPC of at least 30% have an investment grade international credit rating of BBB- or better from Fitch IBCA or Standard and Poor's or equivalent.

¹ Exchange rate taken from www.x-rates.com as at December 2011 (average month)- Exchange rate = 0.0759



Both Socar and Siemens have been rated by respective Credit Rating Agencies as follows:

- Siemens AG have been rated by Standards and Poors with a Rating of A+; Siemens Financial Services have been rated by Standards and Poors with a Rating of A+. A Control and Profit and Loss Transfer Agreement has been entered into between Siemens AG and Siemens Project Ventures;
- Socar have been rated by Fitch with a rating of BBB-. A support letter has been provided by Socar to Socar Trading.

Both of these shareholders have a shareholding that exceeds 30% in the Electrogas Malta Consortium. On such basis, it can be confirmed that the Consortium continues to satisfy the requirement.

D- Ability to raise Finance

- 5- Bidders must demonstrate that at least one Consortium Member has acted in a significant leading role for an independent project which has successfully raised non-recourse or limited recourse financing of at least €300 million in the last four years. Shareholder's funds are defined as total capital employed, including net working capital, less long-term liabilities. The exchange rate for the translation of all accounts not prepared in EUR shall be the exchange rates published by the Central Bank of Malta on the date of issue of this RfP

The Bid document mentions a wide range of projects which have been actively financed by Siemens Project Ventures which in total amount to around USD10.8 billion.

Siemens Projects Ventures are still part of the Consortium and no factors have changed the requirements under this section.

E- Completion of the Project (in OCGT Mode) within eighteen months

The assessment of this minimum requirement on the basis of the terms of reference of the evaluation committee is not relevant since this is not related to a change in membership in the Consortium.

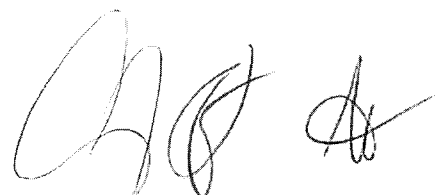
Bid Form 4.2- Minimum Requirements not specified in the EOIC

A review of the original submission of the Electrogas Malta Consortium of the minimum requirements not specified in the EOIC, Bid Form 4.2 indicates that there is no impact resulting from the proposed change.

Section 5: Bid Form 5- Bidder Additional Qualifications

This Bid Form sets out evaluation criteria that have been used by the Adjudication Committee to appraise the Electrogas Consortium over and above the minimum requirements set out in Bid Form 4. These were reviewed to assess whether the exit of Gasol plc negatively effects the scoring granted to the original consortium.

On the basis of the above, the evaluation committee resolved that the exit of Gasol plc has not negatively affected the scoring of the original evaluation carried out as part of the RFP process.



Section 6: Conclusion

In light of the above analysis, the Evaluation Committee has concluded that the exit of Gasol Plc from the Electrogas Malta Consortium has not negatively impacted:

- the Consortium's compliance with the criteria; as well as
- the resultant scoring of EGM by the Adjudicating Committee.



David Galea



Anita Aloisio



George Gregory

21st July 2015